

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK****LOPEZ,****Plaintiff,****-against-****FLUXPACE DESIGN & BUILD LLC, *et al.*,****Defendant.****22-cv-07605 (ALC)****ORDER TO SHOW CAUSE****ANDREW L. CARTER, JR., United States District Judge:**

On April 1, 2024, following this Court's opinion and order granting Defendant's motion to dismiss without prejudice, Plaintiff filed an amended complaint. ECF No. 19. Defendants' answer was due on April 22, 2024. This Court issued an Order to Show Cause as to why this case ought not be dismissed for failure to prosecute. ECF No. 20. Plaintiff filed a response which the Court found established sufficient good cause as to why the action ought not be dismissed. ECF No. 26. Plaintiff then attempted to obtain a Clerk's Certificate of Default. ECF Nos. 22-25. The Clerk of the Court noted that Plaintiff's proposed certificates of default were deficient due to lacking proof of service upon Defendants. The Court then directed Plaintiff to remedy the lacking proof of service by filing of stipulation of service or similar such instrument by July 1, 2024. ECF No. 26. Plaintiff sought and was granted an extension of time to file such proof by July 26. Plaintiff has failed to make any such filing to date.

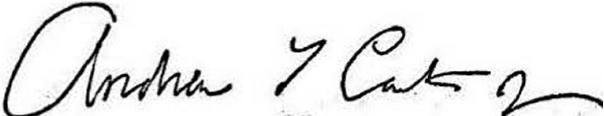
Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

To date, Plaintiff has not filed proof of service with respect to the Defendant. Accordingly, Plaintiff is hereby **ORDERED TO SHOW CAUSE** why this action should not be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m) as well as for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). *See LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001) ("[I]t is unquestioned that Rule 41(b) also gives the district court authority to dismiss a plaintiff's case *sua sponte* for failure to prosecute . . ."). Such showing should be made by filing a written response to this Order by **August 19, 2024**. **Any failure by Plaintiff to make this showing will result in a dismissal of this case without prejudice.**

SO ORDERED.

Dated: August 5, 2024
New York, New York



ANDREW L. CARTER, JR.
United States District Judge